

THE JURY SYSTEM – ARE JURIES OUTMODED?

In recent years, the jury system has come under attack, and the purpose and usefulness of jurors has been questioned and criticized. You remember the O.J. Simpson trial. With the increase in courtroom technology and complex litigation, some argue that the jury system is no longer able to deal with the complexities of modern litigation.

Some critics embrace the concept of trial by judge and abandonment of the jury system. They cite cost, inefficiency and unfavorable results as the reason for change. However, many are skeptical of abandoning the jury system. Would you want to put all your eggs in one basket? Would you want the choice of having 6 or 12 jurors instead of one judge? Maybe it would depend on your circumstances - whether you could lose a lot of money or property, your liberty, or custody of a child. (could ask for a show of hands or take comments here) Where did we get the right to a trial by jury of our peers?

Let's start at the beginning. The concept of jury trials dates back more than 600 years to the inception of the Magna Carta in 1215. In those days, the king was the entire government. The king was the law. The king pronounced the law, heard cases, and enforced the law. Trial by jury was intended to shift the power in criminal cases from the king to the people. (*Any idea on when trial by jury was introduced? A year might be good here*)

In 1670, the trial of a British man, William Penn, brought the independence of criminal trial juries to the forefront. Mr. Penn was charged with illegally preaching about his Quaker beliefs, and the four jurors who acquitted him were imprisoned for their "not guilty" verdict. The jurors had ignored the trial judge's instruction to vote for Mr. Penn's conviction. However, an English appellate court released the jurors from prison. That established the principle that juries cannot be punished for bringing in the "wrong" verdict. The freedom of American jurors to vote their conscience can be traced to this landmark precedent.

How would you feel if you did your civic duty, served on a jury, and were then thrown in prison for voting your conscience? Doesn't make much sense, does it? Early American juries frequently refused to enforce the acts of Parliament in order to protect the rights of individuals. In 1735, a New York jury acquitted John Peter Zenger of seditious libel when he published criticisms of a colonial governor, believing he had a right to print the truth. The jury ignored the trial judge's instruction that "truth was no defense" to the charge of seditious libel. The independence of the jurors in that case helped establish freedom of press on American soil.

Thomas Jefferson himself wrote: "I consider trial by jury as the only anchor ever yet imagined by man by which a government can be held to the principles of its constitution." John Adams wrote: "It is not only the juror's right, but his duty to find the verdict according to his own best understanding, judgment and conscience, though in direct opposition to the direction of the court." Today, a juror is required to follow the courts instruction on the law.

While jurors operating under English law appeared to have broader discretion in interpreting and applying the law, there was good reason. Judges were appointed by the king. Therefore, to allow the king's judges to dictate law which the jury must follow, was equivalent to the king imposing his will on the outcome.

Today, most state court judges are elected, either by competitive election or upon a retention ballot. They are answerable to the people. Although unlikely, even federal court judges who are appointed by the President and confirmed by Congress are subject to appeal and possibly can be removed under some limited circumstances. This process provides checks and balances in our legal system and permits a more defined separation of responsibilities between judge and jury.

So if these responsibilities are separated, who is responsible for what? Let's take a look at the roles and responsibilities of our courtroom players: the trial judge, the jury, and the attorney.

The Trial Judge:

The trial judge is responsible for maintaining order and insuring a fair trial. This includes protecting the rights of both parties to insure a fair and orderly proceeding. The judge is also required to determine and instruct the jury on the applicable law and to rule on the admissibility of evidence during the trial.

The Jury:

The role of the jurors includes listening to witnesses, examining documents and determining the credibility and weight of the evidence based upon common sense and experience. Jurors are required to follow the law of the case as the judge instructs, and apply the facts to the law, separating out relevant facts from unimportant material. Jurors, as determiners of the facts, must be impartial and objective.

The Attorneys:

The role of the attorney differs from what we frequently see in movies and on TV. This can be considered a good thing if you have ever seen some of the recent lawyer shows, or the judge so-and-so programs. The attorney is not a witness and his/her words are not evidence. When attorneys become licensed to practice, they are sworn in as officers of the court. As an officer of the court, an attorney is required to act ethically and professionally when presenting the client's case. The attorney must thoroughly investigate the facts and must not knowingly present or allow his/her client to present false testimony.

Don't you dislike the lawyer who plays tricks to avoid the truth in the case? (Take comments here: Why? How should lawyers behave in court?)

In trial, the attorney is the spokesperson for the client, and is responsible for presenting the client's case in a professional and aggressive manner. The attorney's role includes jury selection- which is a procedure for seating fair and impartial jurors- opening statements, in which the attorney outlines the client's case and any anticipated evidence; presentation of the client's evidence- this usually takes the form of witness

testimony and exhibits; cross-examination of the opposing parties' witnesses; and, when necessary, challenging the opposition's witness testimony and exhibits.

Finally, when all of the evidence has been presented by both parties and the court's instructions have been read to the jury, the attorneys are given the opportunity to persuade jurors in favor of their clients' position through what is called closing arguments. This is a chance for the attorneys to express their personal opinions about the evidence, the facts to be drawn from the evidence, and the applicability of the facts to the law as set forth in the trial judge's instructions.

Let me ask you, if you could write the script for a lawyer movie or tv show, how would you depict lawyers' behavior? (Take comments here.) Viewers would probably be less interested if the attorneys on screen behaved as they were supposed to in real life: ethically and professionally. Most real life trials aren't as exciting as those on tv and movies.

One word you have heard used both in fiction and in real life is "appeal." Let's take a look at the appeal process and how juries work within it.

The Appeal:

Appeals take place in the appellate court, which serves as the final safety valve on the judicial process. The appellate court reviews errors of law and fairness of the trial process. Errors of law may involve erroneous instruction on the law, erroneous admission or exclusion of evidence. Appellate review of the trial process may include conduct of the attorneys, the trial judge and other matters which may have affected the fairness of the trial itself.

The appellate court normally does not review the evidence to determine if the jurors' factual determinations were correct. However, it has the power to reverse a judgment that was obtained erroneously, grant a new trial, enforce the trial court's judgment or take other action consistent with its scope of review.

We've talked a lot about how the judicial system and lawyers are portrayed in the media today. That's probably because we are so often bombarded by t.v. and newspapers' accounts of trials, including endless commentaries by people with questionable expertise - or questionable motives. As a result, juries, judges and lawyers are often blamed for what the news media portrays as unpopular results. This is unfair to those who have made a good faith effort to discharge their roles properly. Sometimes public reaction to an unpopular result is due to a misconception of the independent roles of the judge, jury and attorneys. Sometimes it is due to a misconception of the law. Sometimes it is the result of out and out bias.

How would you improve media coverage of the judicial system? (Take comments here.)

There is a gift shop in the U.S. Supreme Court building. In this gift shop, the turtle is featured as a symbol of our justice system. This turtle signifies that the judicial process is slow, steady and determined. Our judicial system seeks to resolve disputes

in an orderly and fair manner. It is a system in the truest sense: the integrity of the system depends upon **each party** in the process, the judges, jurors and attorneys performing their roles conscientiously and in good faith.

Public Speaking Tips

Know the room in which you will be speaking.

Being familiar with your surroundings will make you more comfortable when you deliver the speech to your audience.

Know the material.

Do not read the material to the audience. Most people hate listening to someone read a speech because the speaker loses inflections in their voice, the text is not spoken language, and there is little or no eye contact. You are encouraged to give the speech using the outline provided and to use the full text only to become familiar with the material.

Make eye contact.

Include the audience in your speech by making eye contact with as many people as you can.

Convey your enthusiasm for the subject.

If you sound dull and boring, your audience will think you are too.

Imagine yourself giving the speech.

Visualize yourself successful and you will be successful.

Concentrate on the message.

Focus your attention on the message of your speech not the medium of the message.

Avoid using jargon.

Assume your audience knows nothing about the law. Describe concepts using everyday language, not legal terms.

Be honest with your audience.

If you are asked a question you can't answer during the question & answer at the end of your talk, admit you don't know. The audience will respect your honesty. Instead say, "I don't know the answer, but I will find out for you." And follow up with that person after you've researched the answer.